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S E C R E T SECTION 01 OF 04 BRUSSELS 000870

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SUBJECT: (S//NF) IRAN/TERRORISM: EU LIKELY TO REMOVE MEK
FROM TERRORIST LIST IN JUNE

REF: A. LONDON 1292
[1](#)B. LONDON 1468

Classified By: USEU EconMinCouns Peter Chase for reasons 1.4 (b), (d),
(e).

[1](#)1. (S//NF) SUMMARY AND ACTION REQUEST: Triggered by a recent UK court decision, the EU is debating whether to remove the Mujahedin-e Khalq (MEK, also included on the U.S. list of Foreign Terrorist Organizations) from the EU's terrorist designation list as early as the end of June. Delisting could occur as early as the first EU Ministerial to follow SG/HR Solana's return from his trip to Tehran (o/a June 13-15). One Commission source speculated that the funds currently frozen in accordance with the EU listing may be negligible, thus a delisting might have little immediate financial effect. In any case, the EU is weighing possible options to maintain MEK on the list in light potentially broader political ramifications, including the P5 1 process, EU-Iran relations, the security threat posed by the MEK, and current due process challenges at the EU and Member States' courts which threaten the EU's counter-terrorist financing regime. Some EU parties lament that the EU's original listing had not been made, at least in part, on the basis of a request of the United States; certain EU Member States (EUMS) may still request USG assistance to strengthen any revamped designation case. ACTION REQUEST: Influencing EU views on the MEK is important, given the organization's political and legal sympathy campaign throughout Europe. USEU recommends that Washington provide EU posts with updated talking points to influence EU views on the MEK as the Member States reach their final decision about removing the group from the EU list. Should the USG develop any new information about the MEK (as through the course of our 2008 review of the U.S designation of the MEK as an FTO), USEU recommends we share this information with the EU as well. In conjunction with our 2008 review, the United States may wish to consider requesting that the EU continue to list or re-list the MEK -- but this could be a difficult sell due to EU concerns over due process legal challenges. Conversely, should the USG decide to remove the MEK from the U.S. list, we may wish to alert the EU in advance. END SUMMARY AND ACTION REQUEST.

Background

¶2. (S//NF) In 2002 the EU listed the MEK on the EU list of designated terrorists on the sole legal basis of the UK's domestic designation. Now that the UK's high court has overturned that domestic designation (REF A), the EU has lost the legal basis for its EU-level designation. This puts the EU in a bind, as the designation list is due for renewal and no other EU Member State has come forward with a decision by a competent authority to replace the UK's designation at EU level. Pending MEK legal challenges at the EU's Court of First Instance (CFI) present an additional complication. The MEK has already successfully waged one case at the CFI to challenge its EU listing, which resulted in revised EU designation procedures, but not an actual delisting. A second MEK case is pending at the CFI, challenging its designation under the revised procedures on due process and substantive grounds. A ruling in this case is expected as early as this fall.

Timing: Review Due, EU Likely to Delist in June

¶3. (S//NF) Last issued in December 2007, the EU list is due for its six-monthly comprehensive renewal by consensus of all 27 EU Member States (EUMS) no later than the end of June. According to Council Secretariat and EUMS contacts, the EU most likely will delist the MEK this month. USEU understands

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this could take place at any of the EU Ministerial meetings scheduled for the last half of June. Delisting could occur as early as the June 16-17 General Affairs and External Relations Council, which falls after SG/HR Solana's return from his forthcoming trip to Tehran (o/a June 13-15). A classified meeting of the EU External Relations (RELEX) Counselors may address this issue on June 13. A Commission source speculated that a decision will not be final until after the UK House of Lords debate (date not specified), in order not to appear as though the EU is "preempting" discussion at this venue.

¶4. (S//NF) In accordance with the 2007 updated EU procedures for designating terrorists, revised in part after the MEK's December 2006 victory at the EU's Court of First Instance, all listed entities related to the EU's Common Position 931 and Regulation 2580/2001 must receive at least a month's notice if the EU intends to maintain them on the list. Because the UK's domestic terrorist designation of the MEK served as the sole competent authority / legal basis of the original EU listing, as explained in the Statement of Reasons given to the MEK, the UK court's overturning of the UK designation will remove the basis for the EU listing. Although the UK delisting is not yet technically in effect, some lawyers and policy officials have argued in favor of removing the MEK from the list now, rather than awaiting the formal UK delisting process expected in July (REF B). After the final decision is reached by the Council's 931 (designations) committee, an additional "two or three weeks" are normally needed to prepare the paperwork for the Council's final decision.

Net Impact of Delisting Negligible?

¶5. (S//NF) A Commission sanctions officer raised doubts to USEU on June 6 whether significant MEK assets are presently frozen in the EU in conjunction with the present listing. Our source explained that the MEK's NCRI office in France had special provisions under the existing rules which left a

loophole for freezing existing assets. Our source speculated, therefore, that a removal of the MEK from the EU list might have little impact in practical financial terms.

Decision Factors: Iran, P5 1, Pending Court Challenges

¶16. (S//NF) A Council Secretariat contact said that the EU decision to either list or de-list may await SG/HR Solana's return from Iran at the earliest, so as not to jeopardize the P5 1 process. Iran has been directly lobbying the EU to maintain the MEK on the list, but contacts did not mention whether the EU has received a formal request from Iran to this effect. Contacts report that EU Council Secretariat Director General for External and Politico-Military Affairs Robert Cooper carefully laid out all the potential ramifications for EUMS consideration, including the assessed threat of continued MEK terrorism, the political signal that continued listing or delisting would send, and the process of the EU's pending autonomous designation of Bank Melli. Various EU court challenges -- namely MEK's second case pending judgment at the EU's Court of First Instance -- are at the forefront of EU Council Secretariat and many Member State concerns. (See also paras. 9-10.)

Plan B? U.S. Role?

¶17. (S//NF) EU Member States are weighing possible options to maintain MEK on the list using another (non-UK) competent authority's designation. Council Secretariat contacts said

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certain EUMS "who are more concerned than others" with the potential ramifications of delisting (USEU reads: France) are now considering whether they can or should put forward their own competent authorities' decisions as a new EU basis for maintaining MEK on the list. Decision-makers are unclear how such a change of basis could play out with the courts or whether all EUMS (namely UK) could join consensus in this case. A French contact told USEU on June 3 that Paris may be confronted with a dilemma. On the one hand, the French share British concerns about MEK delisting timing in conjunction with the P5 1 package. On the other hand, the French would certainly prefer not to have to deal with a controversial delisting during their EU Presidency beginning July 1. USEU understands the matter is being handled at the level of Kouchner's cabinet advisors. COMMENT: USEU understands that France has been requesting from the United States identifying information about MEK "repentants" granted refugee status with laissez-passer from the Iraqi government in the Fall of 2007. It is possible this fact-finding could be related to an attempt by the French to build a domestic designation case for use at EU level. In any case, the USG may receive similar requests for MEK-related information in the coming days as Member States assess their options. END COMMENT.

¶18. (S//NF) Some EU Member States and institutions expressed regret internally that the basis for the original Statement of Reasons had not included a U.S. proposal to list MEK. In response to USEU hypothetical questioning, a Council Secretariat contact speculated that if the EU were to receive a U.S. proposal now either requesting that the EU maintain or re-list the MEK after any delisting, the road ahead would still be challenging. Even if such a proposal were submitted before an EU delisting takes place, this would represent a change in circumstances for the EU listing basis, which would require first our formal proposal, then a unanimous consent by all 27 EUMS, then the minimum of one month's advance notification to the MEK that the EU intends to keep them on the list, and a final decision by the Council. This would not leave much (if any) time as the EU does not want the list

to lapse past June.

¶9. (S//NF) It is also far from certain that all 27 EUMS would agree again to list the MEK in the wake of the UK court ruling, contacts said. The UK must decide whether to join consensus now on listing the MEK at EU level, either on the tail end of its domestic designation's basis or that of another state's competent authority. A Council Secretariat contact noted that the UK court's ruling was limited to the UK's domestic designation authority, not the EU's or others; EU law takes precedence over UK law. He conceded it would be "quite ridiculous" for the UK to use the excuse of the expected July time-frame for the formal parliamentary removal of the domestic listing as a basis for voting in favor of continued listing at EU level, even if technically still in force, given the UK court ruling. Especially the "smaller" EUMS harbor strong sensitivities about due process and optics.

¶10. (S//NF) It is theoretically possible that, if the MEK were delisted, the USG or another state could resubmit a listing proposal afterward for future EU consideration and restart the whole process. EUMS would weigh heavily whether it seemed most likely this could provoke a seriously detrimental ruling on the pending MEK or other court cases before EU and Member State courts. Contacts stress that the EU would most likely oppose taking any action deemed likely to jeopardize the entire EU designation system through due process challenges at the courts. A move to redesignate the MEK on a new basis, including a U.S. proposal, would "test the system to the very maximum limit." For a U.S. proposal, courts would likely ask why the EU had never included the U.S. as a basis before, considering the U.S. MEK designation is several years old. In the second MEK hearing on March 6, 2008 for its new trial before the EU's Court of First

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Instance, the presiding judge already asked why the EU's Dec. 2007 terrorist list had not taken into account the UK's POAC review.

¶11. (U) MINIMIZE CONSIDERED.

MURRAY

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